



Seizure of the server by the law  
enforcement agencies.  
How long can it last and what should  
I do in this situation?



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For business entities, electronic document management is the norm in the modern world. Often, the original documents on paper are not stored carefully enough, and sometimes they are not available at the company's office at all. Unfortunately, this fact is also known to law enforcement agencies, which use this circumstance for their own purposes.

Electronic data carriers, in particular the server, may be seized at the company's office at the stage of pre-investigation verification during a public operational search event (inspection of premises, buildings, structures, terrain and vehicles), as well as during a search of the company's premises in a criminal case.

In accordance with Part 1 of Art. 182 of the Code of Criminal Procedure of the Russian Federation, the basis for conducting a search is "the availability of sufficient data to believe that in any place or any person can be tools, equipment, or other means of committing the crime, items, documents and values that may be relevant to the criminal case."

In other words, the search of the company's office can be carried out not only in the case of a criminal procedure check of the company's activities, but also in the case of law enforcement agencies showing such interest in contractors.

Often, it is in such cases that law enforcement officers with great zeal not only exercise the authority to inspect with the participation of a specialist, but also seize electronic media.

According to Part 4.1 of Art. 164 of the Code of Criminal Procedure of the Russian Federation during the preliminary investigation of criminal cases on crimes in the field of entrepreneurial activity "unjustified application of measures that may lead to the suspension of the legal activities of legal entities or individual entrepreneurs is not allowed, including unjustified confiscation of electronic media".

Exceptions to this rule are indicated in Part 1 of Art. 164.1 of the Criminal Procedure Code of the Russian Federation - they are made up of cases when:

1) a resolution was issued on the appointment of a forensic examination in relation to electronic media;

2) the seizure of electronic media is carried out on the basis of a court decision;

3) the electronic media contains information that the owner of the electronic media does not have the authority to store and use, or which can be used to commit new crimes, or the copying of which, at the request of a specialist, may entail its loss or change.

It is the last argument - "the copying of which, according to a specialist, may entail its loss or change" - is used by the preliminary investigation authorities to justify the seizure of the server. However, in fact, he is often seized in order to influence the head of the company, from whom it is necessary to obtain detailed testimonies incriminating himself or other persons, while the representatives of the company participating in the search are refused to copy the information necessary to carry out current activities.

Electronic media seized in the specified order in cases of crimes in the field of entrepreneurial activity are subject, by virtue of Part 1 of Art. 81.1 of the Code of Criminal Procedure of the Russian Federation, recognition of them as material evidence and admission to the case file, about which an appropriate resolution is issued.

The time frame for making such a procedural decision is established by law in Part 2 of Art. 81.1 of the Criminal Procedure Code of the Russian Federation: 10 days from the date of seizure according to the general rule; + 30 days in case of an extension of the period due to a large volume or for other objective reasons; 3 days from the date of receipt of the expert's opinion, if it is necessary to conduct an examination to determine the evidentiary value of the seized media (at the same time, the timing of the appointment of an examination and the waiting time for the start of its production are not clearly defined by law).

If the procedural decision on recognizing the seized electronic media as material evidence has not been made, then in accordance with Part 4 of Art. 81.1 of the Code of Criminal Procedure of the Russian Federation, such items are subject to return to the persons from whom they were seized, no later than 5 days after the expiration of the specified periods.

Thus, most often in practice, we can talk about the legal "retention" of seized electronic media by law enforcement agencies for a period of about 45 days.

If law enforcement officials violate the requirements of the law, their actions (inaction) may be appealed in accordance with the procedure established by the criminal procedure law to the head of the investigative body, the Prosecutor or the court.

Applying to Supervisory or judicial authorities with a complaint is also a time – consuming process, and therefore it seems appropriate to ensure that information is stored in electronic form in conditions that exclude its complete withdrawal, or ensure its regular backup.

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